



STATE OF NEW JERSEY

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

In the Matter of Samira Rodgers,
Correctional Police Officer (S9988A),
Department of Corrections

List Removal Appeal

CSC Docket No. 2020-2555

**ISSUED: DECEMBER 21, 2020
(ABR)**

Samira Rodgers appeals her removal from the Correctional Police Officer (S9988A), Department of Corrections (DOC) eligible list based upon an unsatisfactory criminal record and an unsatisfactory employment record.

The appellant, a non-veteran, applied for and passed the examination for Correctional Police Officer (S9988A), which had a closing date of August 31, 2019. The subject eligible list promulgated on May 15, 2020 and expires on May 14, 2022. The appellant’s name was certified from the subject eligible list. The appointing authority removed the appellant’s name from the subject eligible list on the basis of an unsatisfactory criminal record and an unsatisfactory employment record. Specifically, with regard to her criminal record, the appointing authority indicated that in March 2011, the appellant, at age 28, was charged with theft by unlawful taking (property valued between \$500 and \$74,999), in violation of *N.J.S.A. 2C:20-3A*, a third-degree crime. It noted that the charges were diverted through the Pre-Trial Intervention Program (PTI) and ultimately dismissed on August 20, 2012. As to the appellant’s employment record, the appointing authority asserted that she was terminated from a Medical Assistant position in 2014; disciplined and terminated from her position as a Sales Specialist with Lowe’s in 2012 based on the March 2011 incident; terminated from a position in 2006 for time- and attendance-related reasons in 2006; and disciplined while serving as a Security Guard for not complying with her employer’s uniform policy.

On appeal to the Civil Service Commission (Commission), the appellant argues that her name should be restored to the eligible list. Initially, she maintains that she did not steal from Lowe’s. Rather, the appellant proffers that the head cashier at

Lowe's removed money from her register without her knowledge. The appellant explains that the head cashier was able to perpetrate the theft because the appellant was unable to watch the head cashier count the money from her register drawer at the end of her shifts, as she needed to leave the workplace by 11:00 PM in order to get the last bus home. The appellant further notes that the charges against her were ultimately dismissed. The appellant also submits screenshots of a message thread as proof that she did not commit the theft at issue. Similarly, she avers that the remainder of her employment history does not support the removal of her name from the subject eligible list, as she contends that she was wrongfully terminated from the positions she held in 2006 and 2014, and her employer unfairly disciplined her while she was serving as a Security Guard after it failed to provide her a new uniform following a merger with another company.

In response, the appointing authority maintains that the appellant's criminal record and employment history support the removal of her name from the subject eligible list. It contends, in relevant part, that she was dismissed from her position at Lowe's for theft and that the conversation thread that the appellant submits regarding that charge does not demonstrate that she was wrongfully accused of that crime. In support, the appointing authority submits a criminal history record for the appellant that also indicates that she was arrested in Irvington Township on a charge of shoplifting, in violation of *N.J.S.A. 2C:20-11B(1)*, based on an August 15, 2001 incident. The charge was dismissed in September 2001.

CONCLUSION

N.J.S.A. 11A:4-11 and *N.J.A.C. 4A:4-4.7(a)4* provide that an eligible's name may be removed from an eligible list when an eligible has a criminal record which includes a conviction for a crime which adversely relates to the employment sought. The following factors may be considered in such determination:

- a. Nature and seriousness of the crime;
- b. Circumstances under which the crime occurred;
- c. Date of the crime and age of the eligible when the crime was committed;
- d. Whether the crime was an isolated event; and
- e. Evidence of rehabilitation.

N.J.A.C. 4A:4-4.7(a)1, in conjunction with *N.J.A.C. 4A:4-6.1(a)9*, allows the Commission to remove an eligible's name from an eligible list for other sufficient reasons. Removal for other sufficient reasons includes, but is not limited to, a consideration that based on a candidate's background and recognizing the nature of the position at issue, a person should not be eligible for appointment. *N.J.A.C. 4A:4-6.3(b)*, in conjunction with *N.J.A.C. 4A:4-4.7(d)*, provides that the appellant has the burden of proof to show by a preponderance of the evidence that an appointing authority's decision to remove his or her name from an eligible list was in error.

Participation in the PTI Program is neither a conviction nor an acquittal. *See N.J.S.A. 2C:43-13(d)*. *See also Grill and Walsh v. City of Newark Police Department*, Docket No. A-6224-98T3 (App. Div. January 30, 2001); *In the Matter of Christopher J. Ritoch* (MSB, decided July 27, 1993). *N.J.S.A. 2C:43-13(d)* provides that upon completion of supervisory treatment, and with the consent of the prosecutor, the complaint, indictment or accusation against the participant may be dismissed with prejudice. The Appellate Division has observed that while the PTI Program provides a channel to resolve a criminal charge without the risk of conviction, it has **not** been construed to be a favorable disposition. *See In the Matter of Clifton Gauthier, Rockaway Township*, 461 *N.J. Super.* 507 (App. Div. 2019); *See also Grill, supra*. Furthermore, while an arrest is not an admission of guilt, it may warrant removal of an eligible's name where the arrest adversely relates to the employment sought. Thus, the appellant's arrest and entry into the PTI program could still be properly considered in removing her name from the subject eligible list. *Compare In the Matter of Harold Cohrs* (MSB, decided May 5, 2004) (Removal of an eligible's name reversed due to length of time that had elapsed since his completion of his PTI).

In the instant matter, a review of the record indicates that the appointing authority possessed a sufficient basis to remove the appellant's name from the subject eligible list. Initially, although the appointing authority has cited its internal criteria as a basis for removing the appellant's name from the subject eligible list, the Commission emphasizes that it must decide each list removal appeal on the basis of the record presented and that it is not bound by the criteria utilized by the appointing authority. *See, e.g., In the Matter of Debra Dygon* (MSB, decided May 23, 2000). Although the charges against the appellant were dismissed after she completed PTI, as noted above, they may still be considered in light of the factors noted in *N.J.S.A. 11A:4-11* and *N.J.A.C. 4A:4-4.7(a)4* to determine whether they adversely relate to the employment sought. Here, the record shows that the underlying incident was serious, as the appellant was charged with theft by unlawful taking in March 2011 and terminated from her position with Lowe's based upon an allegation that she stole money from her employer's cash registers. The appellant was 28 years old at the time of this incident, which occurred approximately eight-and-one-half years prior to the closing date. As noted above, the appellant's completion of PTI after the 2011 charge is not considered to be a favorable disposition of that charge. Moreover, the 2011 theft charge was not an isolated incident, as the appellant was arrested for shoplifting, a crime of theft, in August 2001. The Commission is ever mindful of the high standards that are placed upon law enforcement candidates and personnel. A Correctional Police Officer is a law enforcement employee who must help keep order in the prisons and promote adherence to the law. Correctional Police Officers, like municipal Police Officers, hold highly visible and sensitive positions within the community and the standard for an applicant includes good character and an image of utmost confidence and trust. *See Moorestown v. Armstrong*, 89 *N.J. Super.* 560 (App. Div. 1965), *cert. denied*, 47 *N.J.* 80 (1966). *See also In re Phillips*, 117 *N.J.* 567

(1990). The public expects Correctional Police Officers to present a personal background that exhibits respect for the law and rules. Clearly, the appellant's background, which includes arrests for shoplifting and theft by unlawful taking reflects poorly upon the appellant's ability to meet the high standards of conduct expected of a Correctional Police Officer. Accordingly, the appellant has not met her burden of proof in this matter and the totality of the record provided sufficient grounds to remove the appellant's name from the Correctional Police Officer (S9988A) eligible list.

It is therefore unnecessary to address whether the appellant's employment history also supported the removal of her name from the subject eligible list.

ORDER

Therefore, it is ordered that this appeal be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 16TH DAY OF DECEMBER 2020

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